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In re Application of
Georg PLETZER et al.
Application No.: 10/049,925
PCT No.: PCT/EP00/06660
International Filing Date: 13 July 2000
Priority Date: 21 August 1999
For: METHOD AND CONSTRUCTION
MACHINE FOR PRODUCING GROUND
SURFACES

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DECISION

This decision is responsive to applicants' PETITION filed 21 September 2004..

BACKGROUND

On 13 July 2000, applicants filed international application PCT/EP00/06660 claiming priority to an earlier application filed 21 August 1999. A copy of the international application was timely communicated to the United States Patent and Trademark Office by the International Bureau. A DEMAND for international preliminary examination, in which the United States was elected, was filed on 22 February 2001. Accordingly, the thirty month period for paying the basic national fee in the United States of America expired at midnight on 21 February 2002.

On 20 February 2002, applicants filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States under 35 U.S.C. 371, accompanied by, *inter alia*, the required basic national fee, a copy of the international application, and an English language translation of the international application.

On 29 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration under 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(e) were required.

On 26 July 2002, applicants filed an executed declaration and the required surcharge.

On 25 November 2002, the DO/EO/US mailed a NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 AND 1.495 (Form PCT/DO/EO/903) indicating a date under 35 U.S.C. 371 of 26 July 2002.

On 23 March 2004, the Office of PCT Legal Administration mailed a NOTIFICATION indicating that the NOTIFICATION OF ACCEPTANCE mailed 25 November 2002 was vacated because applicants had not provided a complete translation of the international application. The NOTIFICATION afforded applicants a two month response period and indicated that extensions of time were available under 37 CFR 1.136(a).

On 12 August 2004, applicants filed a status inquiry.

On 10 September 2004, the Office of PCT Legal Administration mailed a response to applicants' status inquiry which included a copy of the previously mailed NOTIFICATION requiring a complete translation.

On 21 September 2004, applicants filed the instant petition. The petition is accompanied by a drawing sheet containing Figure 4 with translated text. Applicants indicate that they did not receive the NOTIFICATION originally mailed 23 March 2004 until a copy was sent in response to their status inquiry. Applicants therefore request that the translated drawing sheet should be accepted without the need for an extension of time fee. Applicants' translated drawing sheet submission is further accompanied by the surcharge under 37 CFR 1.492(f) for providing the translation after thirty months from the priority date.

DISCUSSION

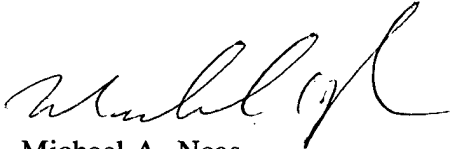
Applicants' petition does not provide conclusive evidence that the NOTIFICATION mailed 23 March 2004 was not received in counsel's office. Applicants provided a page from the USPTO's PAIR system which does not list the NOTIFICATION as support for their claim that the NOTIFICATION was not received. The PAIR page only indicates that the NOTIFICATION was not recorded in the USPTO's electronic database. The application file itself evidences mailing of the NOTIFICATION on 23 MARCH 2004 to counsel's address of record. Applicants' have not provided sufficient evidence to establish non-receipt of the NOTIFICATION. MPEP 711.03(c) describes the showing required to establish non-receipt of an Office communication.

CONCLUSION

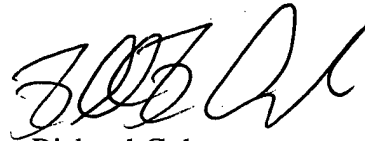
For the reasons stated above, applicants' petition is **DISMISSED** with prejudice.

As authorized in the petition, counsel's deposit account will be charged a four month extension of time fee such that the submission of the translated drawing sheet is timely.

The application is being returned to the DO/EO/US for further processing in accordance with this decision, including the mailing of a Notification Of Acceptance indicating a date under 35 U.S.C. 371 of 21 September 2004.



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